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TO: Members, Senate Judiciary, Correction, and Housing Committee

FR: Attorney General J.B. Van Hollen

DT: March 4, 2008

RE: Senate Bill 216

I am writing today in support of 2007 Senate Bill 216. This legislation authorizes Wisconsin to share with the federal government information about adjudicated mental commitments for the limited purpose of gun background checks, closing an existing loophole in state law.

In the aftermath of the Virginia Tech shootings, I had the privilege of representing Wisconsin on a multi-state task force studying school and campus safety. Our task force, comprised of state attorneys general of both political parties from throughout the nation, developed a variety of policy recommendations for consideration after hearing testimony from a number of school and campus safety experts. One of the task force's key policy recommendations was to review existing laws to ensure that all information relevant to federal firearms laws, including information about mental commitment adjudications, is shared with the National Instant Firearms Background Checks System. This is a policy recommendation I support and is one I had the opportunity to discuss with legislators during the early months of this legislative session.

Before the multi-state task force came out with its final recommendations, a bipartisan Wisconsin legislative coalition, led by Representative Gunderson and Senator Darling, had already introduced the important legislation that is now before this committee. Nevertheless, I mention the task force because I think it demonstrates that the legislation being discussed today is one of the primary policy initiatives that state law enforcement leaders throughout the nation and in both political parties have identified as a common sense initiative to make our schools safer.

Let me provide a little background about current law and practice. Today, the Crime Information Bureau of the Wisconsin Department of Justice maintains the state's criminal history database. The Crime Information Bureau also operates the state's "handgun hotline." As required by state law, the Department of Justice is responsible for conducting background checks on handgun purchases from licensed dealers. (The federal government conducts firearms background checks for long-gun purchases from licensed dealers). When we conduct the instant background check, we query not only our state database, but also the federal database, known as NICS. NICS contains data relating to federal proceedings relevant to a background check, as well as information contributed by our sister

states for use by other states and the federal government who query NICS for the limited purpose of conducting firearms background checks. Thus, when the Wisconsin Department of Justice conducts a firearms background check, we get not only state information, but also information contributed to NICS by other states.

DOJ-CIB shares various data with NICS that would be relevant to a firearms background check. Though courts are directed by current law to notify DOJ-CIB when a person has been adjudicated mentally incompetent and the court has ordered that the person may not possess a firearm because of a finding of dangerousness, current law does not permit DOJ to share mental health commitment information with NICS—even where an individual who has been adjudicated mentally incompetent is prohibited by state or federal law from using a firearm. Current law thus has the effect of:

- Enabling certain persons committed through a Wisconsin court adjudication who are prohibited under federal law from possessing a firearm (but not subject to a specific finding under Wis. Stat. 51.20(13)(cv)) to “pass” a Wisconsin handgun hotline check and any other firearms check in the nation;
- Enabling individuals who have been adjudicated incompetent by state courts who are also prohibited by federal or state law from possessing a firearm to “pass” a firearms background check, including a federal long-gun check for Wisconsin purchases from licensed dealers, or checks conducted by any other state.

SB 216 corrects these problems. First, it requires courts to notify the Department of Justice when there has been an adjudication which orders that a person may not possess a firearm. Second, it requires DOJ (after promulgating rules), to share that information with NICS. The bill does not authorize information to be used by the Department of Justice outside of the purpose of conducting the firearms background check.

It is important as well to make clear that this bill strikes what I believe to be an appropriate balance between privacy and public safety interests. This bill *only* affects those who have been involuntarily committed for treatment or are subject to court-ordered guardianships or placement—legal proceedings that afford persons due process rights. This bill does *not* affect those who voluntarily seek mental health treatment. When a firearms background check is performed and there is a “hit,” the firearms dealer is *not* informed of the reason why the transaction is not being permitted, only that it is not being permitted.

Finally, I note that legislation of this nature is being encouraged at the federal level. In January, the President signed into law the NICS Improvement Amendments Act of 2007. That legislation authorizes significant grant money to be made available to states to improve information-sharing with NICS. As with any future federal grant, there is no absolute guarantee that Wisconsin would receive federal money necessary to implement the changes contemplated by SB 216. My understanding is that the money is not yet been appropriated and grant eligibility guidelines are not yet established. Having said that, improving state communication with NICS is a federal priority, and I am hopeful that Wisconsin will be eligible to apply for and receive federal funds to offset any costs of complying with SB 216, if enacted.

Thank you for your consideration of this important legislation.



Alberta Darling

Wisconsin State Senator

Member, Joint Committee on Finance

Senator Darling Testimony on SB 216
Before the Senate Committee on Judiciary, Corrections and Housing
March 4, 2008

Thank you Chairman Taylor and committee members for hearing this important legislation.

Senate Bill 216 (and companion bill AB 424) would require firearm background checks to access mental health information that would prohibit a handgun purchase under current federal law. This bill simply requires the Wisconsin Circuit Court Access Consolidated Court Automation Programs (CCAP) to provide the necessary information to the Wisconsin Department of Justice (DOJ), which in turn provides the information to the National Instant Criminal Background Check System (NICS).

Background checks for firearm purchases will be strengthened nationwide because each state, including Wisconsin, will securely share mental health records. Federal law prohibits people with an involuntary mental health commitment from possessing firearms, yet Wisconsin does not make that information available when background checks for firearm purchases are performed.

With the April 16, 2007 tragedy at Virginia Tech, where 32 innocent and unarmed citizens were murdered, this issue has renewed importance. The number of states submitting mental health information to NICS increased from 23 to 32 since the Virginia Tech shootings. Wisconsin is still not one of them.

- This bill will keep people who are prohibited for mental health reasons under state and federal law from buying handguns.
- This bill makes information required under current federal law available on a NICS handgun background check.
- This bill does not create any new prohibitions for gun purchases; rather, it simply makes information available to DOJ and NICS that is required under law.

On January 8, 2008, President Bush signed into law the NICS Improvement Act (HR 2640), a law that provides \$250 million annually to states that implement laws such as SB 216. The new federal law will help pay the cost of providing the records, and will withhold federal anti-crime funds if Wisconsin fails to act.

After the Virginia Tech massacre, The US Department of Justice wrote a letter to every state's Attorney General identifying what steps should be taken to ensure states' compliance with federal law. The letter from the US DOJ is clear in its directive to the states. "ATF and our FBI partners who operate the NICS system are encouraging State authorities to take the necessary actions to ensure that all disqualifying information is provided to prevent the purchase of firearms by those prohibited from possessing firearms under Federal law."

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We have worked closely with the Department of Justice to alleviate several concerns posed to us by the Mental Health America of Wisconsin:

1. Minimal information is transmitted to NICS from DOJ, and none that identifies a prohibited purchaser as an adjudicated mental defective. This was a concern of the MHA and the bill, as written, ensures this.
2. Information about those adjudicated as a mental defective is not used for anything other than for background check purposes under this law. No other person can access or transmit this information for any other reason. Our bill, as written, ensures this.
3. We have an amendment making clear that DOJ shall convey information to NICS regarding the cancellation of any such prohibition order against a person. This allows a person's name to be removed once they no longer present a danger. Federal law already guarantees this process will happen, but writing it into statute will doubly ensure it.

We also worked with Legislative Council to alleviate several concerns by Disability Rights of Wisconsin. A memo is attached to this testimony regarding those concerns.

Another frequently asked question refers to the privacy issue of the records being released. It is true that current law prevents the Department of Justice from sharing mental health information because such records are confidential under the Mental Health Act. There are exceptions to this Act, and our bill creates another exception to allow the courts to communicate that information to DOJ.

Last week the Assembly Committee on Criminal Justice passed the companion bill unanimously, 11-0, and the full Assembly will vote on AB 424 tomorrow. With your committee's prompt action, we can have this bill to the Governor's desk before the Legislature adjourns this year.

SB 216 has the support of the Wisconsin Chiefs of Police Association, the Nation Rifle Association, the Milwaukee Police Association, and the University of Wisconsin Police Chief.

We clearly have the need for this bill, and now we have the funding from the Federal government. It's time to bring Wisconsin in line with this federal requirement.

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Editorial: Protecting lives

The state Legislature can control guns while preserving the right to own them. Sharing mental health information with the feds is one useful thing it can do.

From the Journal Sentinel

Posted: March 2, 2008

There is much that should be on the state Legislature's must-do list as the scheduled end of session on March 13 approaches. A Great Lakes compact, campaign finance reform and a statewide smoking ban certainly should be on this priority list.

But at the top should be a bill that makes it possible for Wisconsin to join the 32 other states that share mental health information with a federal database that is used for background checks on gun purchases.

Guns - irrationally - tend to constitute a third rail of politics. The National Rifle Association would have it no other way. But this measure is so modest and so common-sensical that it should not be lumped into that category. And one indication that it isn't is that Rep. Scott Gunderson (R-Waterford), a gun advocate, is one of the authors - with Sen. Alberta Darling (R-River Hills).

The bill would make it possible for the state to apply for a federal grant to update technology that would allow the state Department of Justice to share its mental health records with a federal database.

Of course, this raises privacy questions. So please note that state Attorney General J.B. Van Hollen supports the bill because the records shared involve only those who have been involuntarily committed for treatment or are involved in court-ordered guardianships or placement. It doesn't affect those who voluntarily seek mental health treatment.

Whether such a database should include these is a debate for another day. But this bill is such a modest step that it begs immediate action.

It's unclear whether sharing such mental health information would have prevented the most recent mass shooting - at Northern Illinois University last month. The gunman, Steven Kazmierczak, killed five people and then himself. He had been on medication.

States moved to share the information after authorities discovered that the shooter in the Virginia Tech killings last spring, Seung-Hui Cho, had a history of mental illness, including with the courts. He killed 32 people and himself.

There are other "loopholes" that should be closed when it comes to guns - key among them reinstating a ban on assault weapons that Congress allowed to lapse in 2004. Milwaukee Mayor Tom Barrett correctly has pushed to require background checks on even private handgun sales (perhaps through licensed gun dealers) and require them also at gun shows.

These, too, constitute common sense. But there is that irrational third-rail phenomenon.

So we'll settle. At the very least, Wisconsin should share select mental health information with a federal database used for background checks on gun purchases.

Should Wisconsin provide select mental health data to a federal database for background checks on gun purchases? Send a letter to: Journal Sentinel editorial department

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From the March 3, 2008 editions of the Milwaukee Journal Sentinel

Original Story URL:
<http://www.jsonline.com/story/index.aspx?id=722889>

No-gun list draws further support

Mental health information would go to U.S. database

By STACY FORSTER
sforster@journalsentinel.com

Posted: Feb. 27, 2008

Madison - Lawmakers are advancing a bill that would require the state to submit mental health information on residents who aren't allowed to own guns to a federal database used for background checks on gun purchases.

On Wednesday, the measure passed the Assembly's Committee on Criminal Justice, and the Senate Committee on Judiciary, Corrections and Housing will have a hearing on Tuesday.

Wisconsin is one of 18 states that do not provide the federal government with mental health information on residents who should be barred from owning guns. The data is collected in the National Instant Criminal Background Check System.

Privacy concerns have prevented Wisconsin's Department of Justice from sharing mental health commitment information with the federal database.

Sen. Alberta Darling (R-River Hills), who authored the bill with gun-rights advocate Rep. Scott Gunderson (R-Waterford), called it a loophole.

"Federal law prohibits people with involuntary mental health commitments from possessing firearms, but Wisconsin does not make the information available," she said.

Many states, including Wisconsin, moved toward providing such information to the federal database since last spring's shootings at Virginia Tech, when Seung-Hui Cho, who had a history of mental illness, killed 32 people and himself.

At the time of the Virginia Tech shooting, there were about 100,000 mental health records in the FBI database, said Steve Fischer, a spokesman for the FBI. That's up to about 400,000 now.

"Ideally we'd like to have all 50 states giving us as much information as we can have," Fischer said. "The system is only as good as the information in it."

Guns

Data Gap

■ Wisconsin is one of 18 states that don't provide mental health information to the national gun check database.

Illinois made changes to its laws, but it's unclear whether they could have prevented this month's shootings at Northern Illinois University. The gunman, Steven Kazmierczak, had been on medication but may not have been prevented from buying a gun.

Gov. Jim Doyle, a former attorney general, said in an interview he whole-heartedly supports the idea.

"I think we can do this in a way that protects the privacy but also gets the information (to authorities)," he said. "Many other states do it, and I think Wisconsin should do it."

But with lawmakers slated to conclude their work March 13, it's unclear whether the bill has time to pass this session.

Federal legislation makes grants available to help states update technology to submit mental health records to the database. Passing the bill would allow Wisconsin to apply for such grants.

Currently, the state Department of Justice receives information from courts about mental illness - such as involuntary commitments - that might prohibit someone from owning a gun. However, the state is not allowed to share that information with the federal database.

Darling said she has worked to address concerns of mental health advocates - who feared the state law might expand on federal requirements or the information could be used for other purposes - and those who support gun rights.

Attorney General J.B. Van Hollen told the Assembly committee he supports the bill because it affects only those who have been involuntarily committed for treatment or are subject to court-ordered guardianships or placement, not those who voluntarily seek mental health treatment.

Patrick Marley, of the Journal Sentinel staff, and The Associated Press contributed to this report.

From the Feb. 28, 2008 editions of the Milwaukee Journal Sentinel

Alberta Darling
Wisconsin State Senator
Member, Joint Committee on Finance

TO: Shel Gross, Mental Health Association of Wisconsin
Disability Rights Wisconsin

FR: Senator Alberta Darling

DT: February 26, 2008

RE: Disability Rights Wisconsin's Concerns about AB 424, SB 216

You had posed a concern that the bill may unnecessarily cover people in need of a guardian under Chapter 54. A determination by a court under Chapter 54 includes a determination of competency. This provision is included in the bill because the federal definition of "adjudicated as a mental defective" includes a determination of competency.

Specifically, "adjudicated as a mental defective" means a determination by a court, board, commission, or other lawful authority that a person, as a result of a marked subnormal intelligence, or a mental illness, incompetency, condition, or disease either is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs.

You also had concerns that the bill should require the reporting of information to the FBI narrowly based on *handgun* purchaser prohibitions, as opposed to generally *firearm* purchaser prohibitions. The directive by the Director of the U.S. Department of Justice, Bureau of Alcohol, Tobacco to the States' Attorneys General referred to the states determining *firearm* possession prohibitions under Federal law, which requires information to be reported to the Federal National Instant Background Check System (NICS). This is not a directive based narrowly on handgun purchases.

Additionally, Wisconsin long-gun purchasers must pass a background check conducted via the Federal NICS system, which determines prohibitions based on federal law. Wisconsin handgun purchasers must pass a background check conducted by the Wisconsin State Department of Justice, which utilizes multiple databases including the NICS. Therefore, any firearm purchaser submitting to a background check in Wisconsin must pass the NICS.

The relating clause and the analysis by the Legislative Reference Bureau refer to background checks for the purchase of *handguns* because the bill amends Wisconsin's current system for handgun background checks. The bill additionally requires information to be sent to the Federal government for its firearm background check purposes.

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**Testimony on SB216
To Senate Committee on Judiciary, Corrections, and Housing
Shel Gross, Director of Public Policy
Mental Health America of Wisconsin**

I appreciate the opportunity to testify for informational purposes to the committee regarding SB216, which would conform Wisconsin law to the National Instant Criminal Background Check System (NICS).

Mental health consumers and advocates are always concerned about policies or laws that appear to link violence or dangerousness with mental illness as this can reinforce inaccurate stereotypes of people with mental illnesses. Most people with mental illnesses are not violent or a danger to others and, in fact, mental illness alone does not appear to convey a risk of violence above that of the general population. Nonetheless, we recognize that some individuals, at some points in their illness, may be found to be a danger and we further recognize that the state has a responsibility to comply with federal law in this area. It is important, therefore, that the state's response meets the requirements of the federal law but does not exceed what is required in ways that might contribute to stigma or discourage people who may need and want treatment from seeking such treatment.

To this end I have identified three issues that I think would be important for this legislation to address. I have worked with Sen. Darling's office on this and would like to express my appreciation for her willingness to address these issues. The issues are:

1. Ensuring only the minimal amount of required information is provided to the NICS database. Specifically, it is my understanding that the NICS requires only identifying information about who is not eligible to purchase weapons but does not need to include information that the individual is restricted because of a mental illness. My understanding is that while the Department of Justice (DOJ) will have information identifying that a particular individual is restricted from purchasing a handgun due to a finding of mental illness and dangerousness this information will not be communicated to NICS.
2. Ensuring that the database would not be used for purposes other than reporting to the handgun registry to protect potential violations of confidentiality. My understanding is that this particular information is used only for purposes of reporting to NICS and will not be available for other purposes.
3. A person's name is removed once they are found to no longer present a danger to others. My understanding is that federal law allows for this but that an amendment to clarify this in the current bill would be useful. The bill does direct the courts to inform DOJ when the court has determined that the person is no longer under commitment and a danger to him or herself or others.

Thank you.

